"If full faith and credit is given to that opinion, we think it must necessarily follow that petitioner is as guilty of contempt as were Turk and Wallen.

"If intimidating a witness and preventing his appearance at court is a contempt, if preventing the appearance of a litigant in court is such an obstruction of judicial procedure as constitutes contempt, why is it not contempt to be guilty of improper conduct designed and intended to influence and control the action of the court itself? The reasoning of Mr. Justice Scott in the case of Neel *v.* State, supra, is applicable here. He said: 'When, therefore, the common law deemed it so necessary, for this great purpose, to protect the juror, the witness, the informer, the party, the jailer, the attorney, and other persons, many of whom might never again be called into a court of justice, it was not to be expected that it would fail to cover with its complete armor the presiding minister of the law's majesty, who would be so often exposed to similar trials. Not that any higher personal privileges were arrogated for him than for the humblest of these, but because it was obvious that the principle which suggested the protection of these would, at least to the same extent, protect him, if it did not rise with the grade of the officer, and the majesty of the law be more degraded in the person of a higher than a lower officer, intrusted with its administration.' In offering actual physical violence to the person of the judge, petitioner was in the constructive presence of the court, for he sought thus to influence, intimidate, and control the action of the judge in the matter of resetting his case for trial when the judge had again resumed the bench. In the case of Stuart *v.* People, 4 Ill. 395, the supreme court of Illinois said that in the class of constructive contempts would necessarily be included all acts calculated to impede, embarrass, or obstruct the court in the administration of justice, and that such acts would be considered as done in the presence of the court. See also People *v.* Wilson, 64 Ill. 196, 16 Am. Rep. 528, 1 Am. Crim. Rep. 107; Ex parte McCowan, 139 N. C. 95, 2 L. R. A. (N. S.) 603, 51 S. E. 957; McCarthy *v.* Hugo, 82 Conn. 262, 135 Am. St. Rep. 270, 73 Atl. 778, 17 Ann. Cas. 219, and the notes thereto, in which cases supporting and opposing the view that acts impeding the administration of justice will be held to be within the constructive presence of the court will be found."

Damages—Recovery for Second Accident Aggravating Personal Injury.—In Wagner *v.* Mittendorf, 232 N. Y. 481, 134 N. E. 539, the Court of Appeals of New York held that if a person is injured and proceeds in accordance with his doctor's instructions, and another accident happens to him which results in aggravating his injury, without negligence on his part, the additional injury may be added to the original injury and damages be recovered for all of the injury.

The court said in part:

"In Lyons *v.* Erie Ry. Co., 57 N. Y. 489, the defendant objected to

the plaintiff offering proof that the exercise which he took and which might have retarded his recovery was due to the advice of his physician. The evidence was held competent, Earl, J., saying:

" 'When one receives an injury through the carelessness of another, he is bound to use ordinary care to cure and restore himself. He cannot recklessly enhance his injury and charge it to another. If his arm be broken he cannot omit to have it set, and charge the loss of the arm to the wrongdoer. He is not obliged to employ the most skillful surgeon that can be found, or resort to the greatest expense to ward off the consequence of an injury which another has inflicted upon him. He is bound to act in good faith and to resort to such means and adopt such methods reasonably within his reach as will make his damage as small as he can. But suppose he makes a mistake and innocently eats or exercises so as to retard his cure or impair his chances of recovery; or suppose he employs a physician who makes a mistake in his treatment, so that he is not as well or as soon restored as he otherwise would have been; who is to be responsible for the mistake? Can the wrongdoer, who has placed him in the position where he must make the choice of remedies and doctors, take advantage of such mistake? Can he shield himself from all the consequences of his wrong because the injured man has not adopted the best means and employed the best doctors? I think not. A wrongdoer breaks an arm; the injury is then done, and the arm for the time is destroyed. He cannot complain that the injured person has failed to restore it so long as he has acted in good faith in its treatment, using the ordinary means within his reach.' Page 490.

"Matter of Phillips *v.* Holmes Express Co., 229 N. Y. 527, 129 N. E. 901, arose under the Workmen's Compensation Law (Consol. Laws, c. 67). The claimant, a chauffeur, received a fracture of the right forearm while cranking a motorcar. Some time thereafter the claimant returned to work and while attempting to crank a car the fracture rebroke. After the first accident the policy of the Ætna Life Insurance Company expired, and the Maryland Casualty Company was the insurer at the time of the second break. Which insurance carrier was liable? We determined in affirming the Appellate Division that the latter injury was the result of the former, and that the first insurer should bear the entire liability. Of course, these cases are not directly in point, but indicate that added injuries may be included in the damage provided they arose out of the first injury or would not have happened but for the first injury, and are not due to the neglect or carelessness of the injured party.

"The precise question has, however, arisen in other states. In Hoseth *v.* Preston Mill Co., 49 Wash. 682, 96 Pac. 423, the plaintiff about three months after he received his original injury was permitted by his physician to go about the hospital wards on crutches, and as he was ascending the stairs from the wards one of the crutches slipped on the landing and he fell to the floor, rebreaking his leg. The Supreme Court of Washington said:

" 'The rule is that the injured person must exercise reasonable care to effect a cure, both as to the selection of a physician and as to his own personal conduct, and if he does so he may recover all damages flowing naturally and proximately from the original injury. And in this case if the respondent was out on crutches under the instructions of his physician, and was in the exercise of due and reasonable care at the time of his fall, he may recover the entire damages sustained, provided of course the second injury was attributable to and would not have occurred except for the original injury.'

"In Conner *v.* Navada, 188 Mo. 148, 161, 86 S. W. 256, 260 (107 Am. St. Rep. 314), the plaintiff had broken her leg. While subsequently riding in a buggy with her husband before the fracture had united, the wheel of the carriage broke down and the broken bones slipped. The court said:

" 'Whilst it was the duty of the plaintiff to have used reasonable care to promote a recovery, yet if she was guilty of no negligence in this respect and an accident happened to her in which the result was more serious because of her then condition than it would have been if she had not already been afflicted, such more serious result in reality becomes the result of the first accident. There was nothing to indicate that the plaintiff was imprudent in this respect; the accident occurred by the breaking down of the wheel of the vehicle, but for which there would have been no jar, and but for the already broken and yet ununited bone in her leg the jar would have produced no ill effect.'

"To the same effect is Postal Telegraph-Cable Co. *v.* Hulsey, 132 Ala. 444, 31 South. 527."

Enjoining Undertaking Parlors as a Nuisance.—In Dean *v.* Powell Undertaking Co. (Cal.), 203 Pac. 1015, it was held that maintenance in a residence district of undertaking parlors from which would escape foul and noxious odors, or which would endanger health from infectious and communicable diseases, can be enjoined as a nuisance under Civ. Code, § 3479, but such parlors cannot be enjoined on findings that they will greatly disturb plaintiffs in the comfortable and quiet enjoyment and free use of their premises, and that plaintiffs will be annoyed mentally and physically depressed and their health injured thereby and their properties depreciated in value.

The court said in part:

"The appellant contends that it should not have been enjoined from conducting upon its own property a business in all respects lawful and in all respects operated with the highest degree of care and under the latest approved methods, solely and entirely because a few people living in the neighborhood believe that such business so conducted will hereafter cause them mental depression. In reply to this contention the respondents have stated they are entitled to the relief awarded and that their position is supported by authorities. They cite cases that arose in those jurisdictions where a statute or ordinance had been passed limiting the locations in which an undertaking establishment might be